

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 02-11383-RWZ

LYCOS, INC.

v.

INTERNET VENTURE WORKS, INC.

MEMORANDUM OF DECISION AND ORDER

March 31, 2003

ZOBEL, D.J.

Plaintiff Lycos, Inc., is suing defendant Internet Venture Works, Inc., under Massachusetts law for alleged violations of a settlement agreement that the two companies executed. Defendant removed the action to this Court, and plaintiff has filed a motion to remand. Plaintiff's motion has two bases: (1) that the terms of the settlement agreement constituted a waiver of any right defendant might have to remove the case to federal court and (2) that no diversity of citizenship exists.

The first basis is predicated on a strained reading of the agreement. The forum selection clause states that both parties "acknowledge that venue is proper in any state or federal court in the Commonwealth of Massachusetts, agree that any action related to this Settlement Agreement must be brought in a state or federal court in the Commonwealth of Massachusetts, and waive any objection it has or may have in the future with respect to any of the foregoing." Settlement Agreement, ¶ 3.8 (emphasis added). The waiver language plainly refers to objections to bringing the case in the state or federal courts of Massachusetts as opposed to the state or federal courts of

another state. The forum selection clause does not bind defendant to any Massachusetts forum selected by plaintiff.

The second basis for remand – that diversity of citizenship does not exist between the parties – presents a more serious argument but is equally meritless. As a general rule, “diversity of citizenship is assessed at the time the action is filed.” Freeport-McMoRan, Inc. v. K N Energy, Inc., 498 U.S. 426, 428 (1991). Where one party is an inactive corporation, most courts determine citizenship by the state of incorporation as well as the state in which the corporation last transacted business. See, e.g., Circle Industries US v. Parke Construction Group, Inc., 183 F.3d 105, 108 (2d Cir. 1999). Plaintiff is a Virginia corporation with its principal place of business in Massachusetts. Defendant is a Delaware corporation that dissolved in December 2001 – before the filing of the present suit. Although defendant was initially headquartered in Massachusetts, the record before this Court shows that it moved its principal place of business to Pennsylvania at least nine months prior to dissolution. Because defendant’s last principal place of business was Pennsylvania, its citizenship for diversity purposes is Pennsylvania and Delaware. This Court therefore has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.

Accordingly, plaintiff’s Motion to Remand is denied.

DATE

RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE